

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

SEP 26 2005

LUTHER D. THOMAS, Clerk
By: *A* Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

AMERICAN DERIVATIVES
CORP.,
a Georgia corporation;
NATIONAL COMMODITIES
CORPORATION INC., a Florida
corporation;
INTERNATIONAL COMMODITY
CLEARING LLC, a Florida
corporation;
BROKERAGE MANAGEMENT
CORP. a Georgia corporation;
LAYNE DAVID GERSTEL, an
individual;
DEVEREUX DECATUR BOOTH,
an individual; and
DAVID N. MITTLER, an individual;

Defendants.

CASE NO.

1 05 - CV 2492

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF AND FOR CIVIL
MONETARY PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. § 1 *ET SEQ.*

I.

SUMMARY

1. Since at least January 2004 through the present (the “relevant time period”), American Derivatives Corp. (“American Derivatives”), Brokerage Management Corp. (“Brokerage Management”), Layne David Gerstel (“Gerstel”), Devereux Decatur Booth (“Booth”) and David N. Mittler (“Mittler”) have engaged in a fraudulent scheme to solicit members of the public to purchase options on commodity futures contracts (“commodity options”) using false and misleading sales representations and failing to disclose material facts.

2. American Derivatives, Gerstel, Booth and Mittler have solicited over 274 members of the public to trade commodity options by (a) making false representations to customers, including the likelihood that the customer will profit from the trades, that customers can profit from trading commodity options based on predictable price movements caused by known or expected events or seasonal trends, and that there is little or no risk involved, and (b) omitting material information, including failing to inform the customers that, in contrast to the large profit representations made to them, 97% of American Derivatives customers lost money, that the impact of known or seasonal events is already factored into the price of commodity options, and of the true risk of loss associated with trading

commodity options at American Derivatives. These customers ultimately lost over \$4.6 million trading with American Derivatives.

3. American Derivatives, Gerstel, Booth and Mittler have engaged, are engaging, or are about to engage in acts and practices in violation of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, as amended (2002) (the “Act”), and the regulations promulgated thereunder (“Regulations”), 17 C.F.R. § 1.1 *et seq.* (2004). Defendants have violated, are violating or are about to violate Section 4c(b) and Regulation 33.10(a) and (c) by engaging in fraudulent activity in connection with trading commodity options, including false representations regarding the profit potential and risk associated with trading commodity options, and failing to disclose material facts regarding the transactions. In addition, American Derivatives, Gerstel and Booth have violated, are violating, or are about to violate Regulation 166.3 by failing either to perform their supervisory duties diligently, or to maintain an adequate supervisory system.

4. Gerstel and Booth are liable under Section 13(b), 7 U.S.C. § 13c(b), of the Act as controlling persons of American Derivatives for its violations of the Act and Regulations, because they did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

5. During the relevant period, Gerstel and Booth willfully aided and abetted the fraudulent conduct by American Derivatives and, therefore, are liable for that fraud pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

6. At all times during the relevant time period, American Derivatives' employees, including Gerstel and Booth, committed the acts and omissions described herein within the course and scope of their employment at American Derivatives. Therefore, American Derivatives is liable under Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B), as a principal for its agents' violations of the Act and Regulations.

7. From on or about January 6, 2004 through on or about May 31, 2004, American Derivatives was a guaranteed introducing broker ("GIB") of National Commodities Corporation Inc. ("NCCI"); therefore, NCCI is jointly and severally liable for American Derivatives' violations of Section 4c(b) and Regulations 33.10(a) and (c), and 166.3 during that time.

8. From on or about June 1, 2004 through on or about December 22, 2004, American Derivatives was a GIB of International Commodity Clearing LLC ("ICC"); therefore, ICC is jointly and severally liable for American Derivatives' violations of Section 4c(b) and Regulations 33.10(a) and (c), and 166.3 during that time.

9. At all times during the relevant time period, Brokerage Management acted as a common enterprise with American Derivatives. Therefore, Brokerage Management is jointly and severally liable for American Derivatives' violations of Section 4c(b) and Regulations 33.10(a) and (c), and 166.3.

10. In the alternative, during the relevant period, Brokerage Management willfully aided and abetted the successful operation of American Derivatives, Gerstel, Booth and Mittler, and enabled the fraud and failure to supervise American Derivatives' employees to occur and, therefore, is liable for that fraud and failure to supervise pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

11. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Plaintiff, the United States Commodity Futures Trading Commission ("Commission"), brings this action to enjoin Defendants' unlawful acts and practices, and to compel their compliance with the Act and the Regulations. In addition, Plaintiff seeks civil monetary penalties and remedial equitable relief including, but not limited to, restitution, disgorgement, pre-judgment and post-judgment interest, and such other relief as this Court may deem necessary or appropriate.

12. Unless restrained and enjoined by this Court, Defendants may continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

II

JURISDICTION AND VENUE

13. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures and option contracts. The Commission possesses jurisdiction, including anti-fraud jurisdiction, pursuant to Section 4c(b) of the Act, to regulate transactions involving commodity options offered and/or entered into with retail customers, in particular, the transactions alleged in this complaint.

14. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice that constitutes a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

15. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants are found in, inhabit, or transact business

in this District, or the acts and practices in violation of the Act occurred, are occurring, or are about to occur within this District, among other places.

III

THE PARTIES

A. Plaintiff

16. The U.S. Commodity Futures Trading Commission is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. § 1 *et seq.*, and the Regulations, 17 C.F.R. § 1.1 *et seq.*

B. Defendants

17. American Derivatives Corp. is a Georgia corporation with a corporate address of 4355J Cobb Parkway, Suite 223, Atlanta, Georgia 30339. American Derivatives has been registered with the Commission as an introducing broker (“IB”) since January 6, 2004. Its main office address is 3353 Peachtree Road, Suite 550, Atlanta, Georgia 30326, and has a branch office at 18851 NE 29th Avenue, Suite 756, Aventura, Florida 33180. During the relevant time period, American Derivatives operated pursuant to guarantee agreements with NCCI from January 6, 2004 through May 31, 2004, and ICC, from June 1, 2004 through December 22, 2004. Since May 12, 2005, American Derivatives has been an independent IB.

18. National Commodities Corporation Inc. was a Florida corporation whose registration expired January 5, 1999. Its address was 1700 N.W. 64th Street; #100, Ft. Lauderdale, Florida 33309. It has been registered with the Commission as a FCM from April 22, 1997. It sought a withdrawal of that registration on July 27, 2004. It also registered with the Commission as a Notice Broker Dealer from December 19, 2001 through July 7, 2004.

19. International Commodity Clearing LLC is a Florida corporation with a corporate address of 1700 N.W. 64th Street; #100, Ft. Lauderdale, Florida 33309. It has been registered with the Commission as a FCM since April 29, 2004.

20. Brokerage Management Corp. is a Georgia corporation with a corporate address of 4355J Cobb Parkway, Suite 223, Atlanta, Georgia 30339.

21. Layne David Gerstel resides in Atlanta, Georgia. According to NFA records, he resides at 4355 Cobb Parkway, J-223, Atlanta, Georgia 30339; however, a recent internet search reflects 700 S. Brighton Court, Atlanta, Georgia 30327, as his residence. He has been listed with the National Futures Association ("NFA") as a principal and registered with the Commission as an associated person ("AP") of American Derivatives since January 6, 2004. Gerstel is the president of American Derivatives and holds a 10% or more financial interest in the

corporation, and is also the chief executive officer, chief financial officer, and the corporate secretary of the firm.

22. In addition, Gerstel is listed on the Brokerage Management corporate registration documents with the State of Georgia as the chief executive officer, chief financial officer, and the corporate secretary of Brokerage Management.

23. Previously, Gerstel has been registered with the Commission in various capacities with seven different firms since April 9, 1997. Gerstel was registered with the Commission as an AP of all seven firms and, additionally, was listed as a principal of two of them. Of the seven firms with which Gerstel previously was registered, six faced NFA or Commission charges, which included allegations of fraudulent sales practices, and general misconduct. One firm was permanently enjoined by a federal district court from engaging in commodity futures trading. Another firm was preliminarily enjoined by this Court from engaging in commodity futures trading in a case that is still pending. In addition, two of Gerstel's other firms were ordered to cease and desist from unlawful activity by administrative courts, and three were permanently barred from NFA membership based on their illegal conduct.

24. Devereux Decatur Booth resides in Atlanta, Georgia. He has been listed with the NFA as a principal and registered with the Commission as an AP of

American Derivatives since July 12, 2004, and is also a director of the firm.

Previously, Booth has been registered with the Commission in various capacities with six firms since January 21, 1997. Booth was registered with the Commission as an AP of five of his previous firms and was listed as a principal of two of them. Of the six firms with which Booth previously was registered, five faced NFA or Commission charges, which included allegations of fraudulent sales practices, and general misconduct. One firm was permanently enjoined by a federal district court from engaging in commodity futures trading. Another firm was preliminarily enjoined by this Court from engaging in commodity futures trading in a case that is still pending. In addition, two of Booth's other prior firms were ordered to cease and desist from unlawful activity by administrative courts, and two were permanently barred from NFA membership based on their illegal conduct.

25. David N. Mittler resides in Aventura, Florida 33180. He was registered with the Commission as an AP of American Derivatives from July 21, 2004 to July 20, 2005. Previously, Mittler has been registered with the Commission in various capacities with seven firms since July 10, 1996. At seven of his previous firms, Mittler was registered with the Commission as an AP of the firm and, additionally was a branch manager of two firms.

IV

FACTS

A. American Derivatives Guarantee Agreements with NCCI and ICC

26. On or about January 6, 2004, American Derivatives and NCCI entered into a guarantee agreement ("NCCI Guarantee Agreement") that terminated on or about May 31, 2004. Under the terms of the NCCI Guarantee Agreement, American Derivatives agreed to introduce all its customers to NCCI to open accounts. In exchange, NCCI NCCI agreed that it:

... guarantees performance by [American Derivatives] of, and shall be jointly and severally liable for, all obligations of [American Derivatives] under the Commodities Exchange Act ... and the rules, regulations and orders which have been or may be promulgated thereunder with respect to the solicitation of and transactions involving all commodity customer, option customer, foreign futures customer and foreign options customer accounts of [American Derivatives] entered into on or after the effective date of this agreement. ...

Termination of this agreement will not affect the liability of [NCCI] with respect to obligations of [American Derivatives] incurred on or before the date this agreement is terminated.

27. On or about June 1, 2004, American Derivatives and ICC entered into a guarantee agreement ("ICC Guarantee Agreement") that terminated on or about December 22, 2004. Under the terms of the ICC Guarantee Agreement, American Derivatives agreed to introduce all its customers to ICC to open accounts. In exchange, ICC agreed that it:

... guarantees performance by [American Derivatives] of, and shall be jointly and severally liable for, all obligations of [American Derivatives] under the Commodities Exchange Act . . . and the rules, regulations and orders which have been or may be promulgated thereunder with respect to the solicitation of and transactions involving all commodity customer, option customer, foreign futures customer and foreign options customer accounts of [American Derivatives] entered into on or after the effective date of this agreement. . . .

Termination of this agreement will not affect the liability of [ICC] with respect to obligations of [American Derivatives] incurred on or before the date this agreement is terminated.

B. Fraudulent Misrepresentations of Profits and Risks and Omissions of Material Facts

28. Since at least January 2004, American Derivatives, through its employees, including Mittler, began soliciting customers to invest in commodity options by, among other things, knowingly, or with reckless disregard, falsely representing the profit potential, falsely representing that publicly known events and seasonal trends can be used to achieve large profits trading commodity options, falsely representing the risks involved, and failing to disclose material facts regarding the transactions.

29. As a result of American Derivatives' misrepresentations regarding profit and risk and omissions of material facts, at least 274 customers invested with American Derivatives and lost in excess of \$4.6 million.

30. American Derivatives, through its employees, including Mittler, knowingly, or with reckless disregard for the truth of the matter, made various

misrepresentations to customers regarding their likelihood of making money if they traded commodity options through American Derivatives, including:

- a. An American Derivatives employee promised a customer that if he invested \$5,000 in heating oil with American Derivatives he would make \$15,000.
- b. Defendant Booth told one customer who had approximately \$900 in his account, that he could buy one share [sic] of heating oil and make “a couple thousand dollars” in a week.
- c. An American Derivatives employee told a customer that, if he invested \$11,000 in Japanese Yen, he would make \$30,000 “by next Wednesday.”
- d. An American Derivatives employee told a customer that he could get the customer’s investment to be worth “six figures” within a year, saying “I can get you there.”
- e. Defendant Mittler urged a customer to invest hundreds of thousands of dollars, to borrow money and even to mortgage his house to raise money for trading because there was such a huge opportunity to make money and Mittler’s recommendations were “can’t miss shots.”
- f. Defendant Mittler told a customer that he would triple her money in a short time and that there was no risk involved.
- g. An American Derivatives employee told a customer that by buying options on heating oil, he could double or triple his investment and that it was a really low-risk investment.
- h. Defendant Mittler encouraged a customer to invest additional funds, repeatedly stating that he could double or triple the customer’s investment.

31. In light of the large profit claims made to customers, American Derivatives, through its employees, including Mittler, knowingly, or with reckless

disregard for the truth of the matter, failed to disclose to customers that at least 97% of American Derivatives' customers lost money trading with American Derivatives. Instead:

- a. An American Derivatives employee told a customer that American Derivatives had tripled the investments of other customers.
- b. Defendant Mittler told a customer that American Derivatives investors were making lots of money.
- c. Two American Derivatives employees told a customer that American Derivatives could double her money and that there was no risk involved.
- d. Defendant Mittler told a customer that by investing in heating oil options she could double her money.

32. American Derivatives, through its employees, including Mittler, also solicits customers to invest by misrepresenting to them, knowingly, or with reckless disregard for the truth of the matter, that known or expected events, such as the war in Iraq, or seasonal trends and weather conditions, such as cold winter weather or hurricanes, would cause predictable movements in the markets, and that by using this information, the customer could achieve high profits by investing through American Derivatives. For example:

- a. An American Derivatives employee told a customer that crude oil was about to make a comeback and prices were about to rise due to the conflicts in Iraq.
- b. Defendant Mittler told a customer that the demand for lumber to rebuild, because of the damage caused by the hurricanes, would cause

prices to rise and the customer should invest [in lumber options] right away so that she could make money from the rise in price.

c. An American Derivatives employee told a customer that the price of heating oil changes with the seasons, in the winter prices rise in anticipation of cold weather and, if customers got in early enough, they could profit from the rise.

d. Defendant Mittler told a customer that the price of heating oil would double as winter approached and demand increased, and that the customer would double or triple his investment.

e. An American Derivatives employee told a customer that based on some current events in the news, there would be movement in the dollar/euro and in the course of two to three trades the customer should be able to double his investment.

f. An American Derivatives employee told a customer that based on news reports, interest rates were set to make a big move and that there was no need to use a straddle on the trade because the rates would only be moving in one direction.

33. Gerstel and Booth knowingly, or with reckless disregard for the truth of the matter, instructed American Derivatives employees that known or expected events, current news items, seasonal trends, and weather conditions can be used to predict price movement, and that this information should be used to sell commodity options to customers. For example, American Derivatives employees were instructed:

a. to tell customers that the war in Iraq, or terrorist activity in the Middle East that destroyed refineries would make oil prices rise;

- b. to use sales pitches based on the news, such as saying that the situation in Iraq, or a big worker strike in Venezuela, will increase prices; and
- c. to tell customers that, in the summer, oil and unleaded gas prices go up and, in the winter, those prices go down and the price of heating oil goes up.

34. Gerstel and Booth also provided employees with sales scripts to use when soliciting customers that indicated, among other things, that a customer can make money by purchasing options on heating oil in the summer, when the prices for heating oil were low, and then selling the option when the price rose in the winter months.

35. American Derivatives, through its employees, including Mittler, knowingly, or with reckless disregard for the truth of the matter, failed to advise customers that commodity futures and option markets already factor in publicly known and expected information; that the impact of current news events, such as the war in Iraq, or seasonal trends, such as the increased demand for heating oil in the winter, are already factored into the price of commodity futures and options; and that customers therefore cannot substantially benefit from trading commodity futures and options on the basis of such events or trends.

36. During the course of their customer solicitations, American Derivatives, through its employees, including Mittler, knowingly, or with reckless disregard for

the truth of the matter, directly or indirectly misrepresented, or omitted to fully disclose, the risks associated with trading commodity options to customers.

American Derivatives, through its employees, directly misrepresented the nature of the risk involved by telling customers that the investments were not that risky, or indirectly misrepresented the risk involved by leading customers to believe that, despite any risk disclosures given, profit was assured and the risk of loss merely theoretical. For example:

- a. When a customer advised Defendant Mittler that her bank had told her that she did not have the funds for an investment with American Derivatives and advised her not to invest, Mittler assured her that there was no risk and that she would be doing the right thing by investing.
- b. An American Derivatives employee assured an unemployed potential customer that he could double or triple his investment and that it was a really low risk investment.
- c. An American Derivatives employee told a customer that, although he was required by law to say that investing is risky, in reality the normal risks of investing were minimized at American Derivatives because they used stop-loss orders and straddles.
- d. An American Derivatives employee assured a potential customer that there was no risk, and when she originally returned her account opening documents and indicated that she was not financially qualified to trade according to the language of the documents, the employee went through the documents with her step-by-step and instructed her what to put on the forms.
- e. When a customer asked his American Derivatives broker about a risk disclosure he was given that said that he could lose everything, the American Derivatives employee told him that the only way that could happen would be if there was no movement in the market and that the

market would always move over time. He also assured the customer that the use of stop-loss orders and straddles minimized the risk involved.

f. After Defendant Mittler urged a customer to invest hundreds of thousands of dollars, to borrow money, and even to mortgage his house to raise money to invest because there was such a huge opportunity to make money and that the investments were “can’t miss shots,” Mittler recorded himself giving the customer a risk disclosure, but by that time, the decision had already been made and the disclosure didn’t mean anything to the customer because of Mittler’s assurances about how much profit the customer would make.

37. During the relevant time period, American Derivatives solicited over 274 customers to invest in commodity options.

38. During the relevant time period, American Derivatives customers collectively incurred over \$4.6 million in losses and, in the first half of 2005 alone, paid over \$976,108 in commissions and fees.

39. During the relevant time period, American Derivatives received at least \$2,269,615 in commissions.

40. During the relevant time period, Gerstel received over \$90,971 from American Derivatives and over \$126,071 from Brokerage Management.

41. During the relevant time period, Booth received over \$58,000 from American Derivatives.

42. During the relevant time period, Mittler received over \$227,307 from American Derivatives and handled at least 61% of American Derivatives' customer accounts.

C. American Derivatives and Brokerage Management are Part of a Common Enterprise or, in the Alternative, Brokerage Management Aids and Abets the Fraud and Failure to Supervise by the Other Defendants

43. Gerstel is the chief executive officer, chief financial officer, and corporate secretary of Brokerage Management. Gerstel signed Brokerage Management's lease agreement for American Derivatives' office space at 3353 Peachtree Road, Suite 550. In addition, Gerstel has signature authority over Brokerage Management's checking account at Wachovia Bank, N.A. ("Wachovia") and signs all checks out of that account.

44. Brokerage Management actively manages the expenses of American Derivatives. It is the lease holder for American Derivatives' Atlanta office and makes the rental payments for the office space on behalf of American Derivatives out of Brokerage Management's Wachovia checking account. It also pays American Derivatives' telephone bills, corporate credit card expenses, and life and health insurance expenses for American Derivatives employees out of Brokerage Management's Wachovia checking account.

45. Brokerage Management's Wachovia account was funded with an initial deposit of \$1,000. Since that time, the Wachovia account has been funded exclusively or nearly exclusively by American Derivatives. During the relevant time period, American Derivatives transferred at least \$901,000 to Brokerage Management.

D. Gerstel and Booth are Controlling Persons of American Derivatives with Supervisory Responsibilities, and Aided and Abetted the Fraud

46. Gerstel is President, a principal and a registered AP of American Derivatives, and is Chief Executive Officer, Chief Financial Officer, and the corporate secretary of the firm.

47. Gerstel supervises and trains the employees. He provides employees with lists of potential customers to call and sales scripts to use, and instructs them to make misrepresentations to customers including, among other things, that known or expected events or seasonal trends and weather conditions will cause predictable movements in the markets that customers can use to achieve high profits by investing through American Derivatives. Gerstel also supervises the employees while they solicit customers by walking the floor and monitoring their phone calls.

48. Gerstel has been registered in the industry since 1997. During that time, he has been registered as an AP of seven different registered firms and has been the principal of two of them.

49. Booth is a principal and a registered AP of American Derivatives.

50. Booth also supervises and trains the employees. He provides employees with scripts that he has prepared to use when soliciting customers and instructs the employees to make misrepresentations to customers including that, among other things, known or expected events or seasonal trends and weather conditions will cause predictable movements in the markets that customers can use to achieve high profits by investing through American Derivatives. Booth also supervises the employees while they solicit customers by walking the floor and monitoring their phone calls.

51. Booth has been registered in the industry since 1997. During that time, he has been registered as an AP of seven different registered firms and has been the principal of two of them.

V.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), AND
SECTIONS 33.10(a) and (c) AND 13(a) OF THE REGULATIONS,
17 C.F.R. §§ 33.10(a) and (c) AND 13c(a):
FRAUD IN CONNECTION WITH COMMODITY OPTION TRANSACTIONS

52. Paragraphs 1 through 51 are realleged and incorporated herein.

53. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), provides that no person shall engage in any commodity option transaction regulated under the Act contrary to any rule, regulation, or order of the Commission. Furthermore, Section 33.10(a) and (c) of the Regulations, 17 C.F.R. § 33.10(a) and (c) makes it unlawful for any person, directly or indirectly, to cheat or defraud or attempt to cheat or defraud any other person, or to deceive or attempt to deceive any other person by any means whatsoever, in or in connection with any commodity option transaction.

54. Section 13(a) of the Regulations, 17 C.F.R. § 13c(a), provides that any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of a violation of any of the provisions of the Act or Regulations, or who, in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly

performed or omitted would be a violation, may be held responsible for such violation as a principal.

55. Since at least January 6, 2004, and continuing through the present, American Derivatives, through its employees, and Mittler violated Section 4c(b) of the Act, and Section 33.10(a) and (c) of the Regulations, by making false representations of material facts and by failing to disclose material facts in soliciting customers to invest in commodity options through American Derivatives by, among other things, falsely representing the profit potential of trading commodity options, falsely representing that that publicly known events and seasonal trends can be used to achieve large profits in trading commodity options, falsely representing the risks associated with trading options and failing to disclose material facts regarding the transactions.

56. American Derivatives employees engaged in the illegal conduct alleged in this Count within the scope of their offices or employment as agents of American Derivatives. Therefore, American Derivatives is liable as a principal for the violations of its agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

57. Pursuant to the NCCI Guarantee Agreement, NCCI is joint and severally liable for “all obligations of [American Derivatives] under the Commodities

Exchange Act . . . and the rules, regulations and orders . . . promulgated thereunder with respect to the solicitation of and transactions . . . entered into on or after the effective date of this agreement” for American Derivatives’ violations of Section 4c(b) of the Act, and Section 33.10(a) and (c) of the Regulations for the period January 6, 2004 through May 31, 2004.

58. Pursuant to the ICC Guarantee Agreement, ICC is joint and severally liable for “all obligations of [American Derivatives] under the Commodities Exchange Act . . . and the rules, regulations and orders . . . promulgated thereunder with respect to the solicitation of and transactions . . . entered into on or after the effective date of this agreement” for American Derivatives’ violations of Section 4c(b) of the Act, and Section 33.10(a) and (c) of the Regulations for the period June 1, 2004 through December 22, 2004.

59. Brokerage Management is engaged in a common enterprise with American Derivatives. Therefore, Brokerage Management is jointly and severally liable for American Derivatives’ violations of Section 4c(b) of the Act, and Section 33.10(a) and (c) of the Regulations .

60. Alternatively, Brokerage Management willfully aided and abetted American Derivatives, Gerstel, Booth and Mittler in their fraud and is therefore liable for such fraud pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a).

61. Gerstel and Booth willfully aided and abetted American Derivatives in its fraud and are therefore liable for such fraud pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a).

62. Gerstel and Booth control American Derivatives, directly or indirectly, and do not act in good faith or knowingly induce, directly or indirectly, American Derivatives' conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Gerstel and Booth are liable for American Derivatives' violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 33.10(a) and (c) of the Regulations, 17 C.F.R. §33.10(a) and (c), as described in this Count.

63. Each false, deceptive, or misleading representation of material facts and each failure to disclose material facts, including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 33.10(a) and (c) of the Regulations, 17 C.F.R. §33.10(a) and (c).

64. Gerstel and Booth are separately liable pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a)(a) for each separate and distinct occasion on which they willfully aided and abetted American Derivatives in its fraud.

65. Brokerage Management is separately liable pursuant Section 13(a) of the Act, 7 U.S.C. § 13c(a)(a) for each separate and distinct occasion to which it

willfully aids and abets American Derivatives, Gerstel, Booth and Mittler in their fraud.

COUNT II

VIOLATIONS OF SECTION 166.3 OF THE REGULATIONS, 17 C.F.R. § 166.3: FAILURE TO SUPERVISE

66. Paragraphs 1 through 65 are realleged and incorporated herein.

67. Section 166.3 of the Commission's Regulations, 17 C.F.R. § 166.3, requires, *inter alia*, that every Commission registrant (except employees who have no supervisory duties) diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents relating to its business as a Commission registrant.

68. Since at least January 2004, and continuing through the present, American Derivatives violated Section 166.3 by failing either to maintain an adequate supervisory system to detect and prevent fraudulent conduct by its employees, or to diligently supervise its employees, as evidenced by the fact that American Derivatives entrusts the supervision of American Derivatives' sales force to Gerstel and Booth, who not only allow, but instruct, American Derivatives employees to engage in the fraudulent conduct described above.

69. Pursuant to the NCCI Guarantee Agreement, NCCI is joint and severally liable for “all obligations of [American Derivatives] under the Commodities Exchange Act . . . and the rules, regulations and orders . . . promulgated thereunder with respect to the solicitation of and transactions . . . entered into on or after the effective date of this agreement” for American Derivatives’ violations of Section 166.3 of the Regulations for the period January 6, 2004 through May 31, 2004.

70. Pursuant to the ICC Guarantee Agreement, ICC is joint and severally liable for “all obligations of [American Derivatives] under the Commodities Exchange Act . . . and the rules, regulations and orders . . . promulgated thereunder with respect to the solicitation of and transactions . . . entered into on or after the effective date of this agreement” for American Derivatives’ violations of Section 166.3 of the Regulations for the period June 1, 2004 through December 22, 2004.

71. Brokerage Management is engaged in a common enterprise with American Derivatives. Therefore, Brokerage Management is jointly and severally liable for American Derivatives’ violations of Section 166.3 of the Regulations.

72. Since at least January 6, 2004, when Gerstel was listed as a principal and registered as an AP of American Derivatives, and continuing through the present, Gerstel, through the facts alleged above, failed to supervise employees, thereby violating Section 166.3 of the Regulations.

73. Since at least July 12, 2004, when Booth was listed as a principal and registered as an AP of American Derivatives, and continuing through the present, Booth failed to supervise employees, thereby violating Section 166.3 of the Regulations.

74. Gerstel and Booth engaged in the illegal conduct alleged in this Count within the scope of their offices or employment as agents of American Derivatives. Therefore, American Derivatives is liable as a principal for the violations of its agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

VI

RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order of permanent injunction:

A. restraining and enjoining Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of the order, by personal service or otherwise, from directly or indirectly:

1. cheating or defrauding or attempting to cheat or defraud other persons and willfully making or causing to be made to other persons any false report or statement thereof, or deceiving or attempting to deceive any other person in or in connection with an offer to enter into, the entry

into or the confirmation of the execution of, any commodity option transaction, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 33.10(a) and (c) of the Regulations, 17 C.F.R. § 33.10(a) and (c);

2. failing to diligently supervise the handling by its/his partners, officers, employees and agents of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its/his partners, officers, employees and agents relating to its business as a Commission registrant, in violation of Section 166.3 of the Regulations, 17 C.F.R. § 166.3; and
3. engaging in any commodity-related activity, including, but not limited to soliciting new customers.

B. requiring Defendants to disgorge all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and the Regulations as described herein, including pre-judgment and post-judgment interest.

C. requiring American Derivatives, Brokerage Management, Gerstel and Booth, jointly and severally, to make restitution to every customer of American Derivatives for harm caused by Defendants' violations of the provisions of the Act and the Regulations as described herein, including pre-judgment and post-judgment interest;

D. requiring NCCI, jointly and severally with American Derivatives, Brokerage Management, Gerstel and Booth, to make restitution to every customer

of American Derivatives for harm caused by Defendants' violations of the provisions of the Act and the Regulations from January 6, 2004 through May 31, 2004, as described herein, including pre-judgment and post-judgment interest;

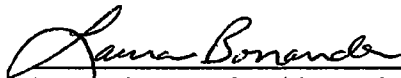
E. requiring ICC, jointly and severally with American Derivatives, Brokerage Management, Gerstel and Booth, to make restitution to every customer of American Derivatives for harm caused by Defendants' violations of the provisions of the Act and the Regulations from June 1, 2004 through December 22, 2004, as described herein, including pre-judgment and post-judgment interest;

F. requiring Mittler, jointly and severally with American Derivatives, NCCI, ICC, Brokerage Management, Gerstel and Booth, to make restitution to every customer of American Derivatives for harm caused by Mittler's violations of the provisions of the Act and the Regulations, as described herein, including pre-judgment and post-judgment interest;

G. requiring Defendants to pay civil monetary penalties under Section 6c of the Act, 7 U.S.C. § 9a, to be assessed by the Court separately against each of them, in amounts not more than the higher of \$120,000, for violations committed prior to October 23, 2004, and \$130,000 for violations committed on or after October 24, 2004, or triple the monetary gain to Defendants for each violation of the Act; and

H. such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

Respectfully submitted,



Laura Bonander (Georgia Bar No. 696541)
Assistant United States Attorney
600 U.S. Courthouse
75 Spring Street, S.W.
Suite 600
Atlanta, Georgia 30303
(404) 581-6000 telephone
(404) 581-6181 facsimile



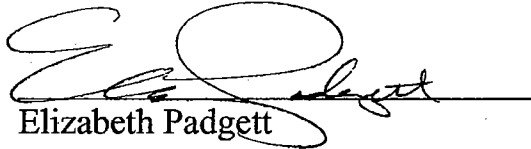
Elizabeth Padgett (*pro hac vice*)
Alison Lurton (*pro hac vice*)
Jan M. Folena (*pro hac vice*)
U.S. Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
(202) 418-5000 telephone
(202) 418-5538 facsimile

Attorneys for Plaintiff

Dated: September 22, 2005

CERTIFICATE OF COMPLIANCE WITH LR 5.1B

I hereby certify that the foregoing COMPLAINT was prepared using Times New Roman, 14 point.



Elizabeth Padgett